PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

EX. I, 95-2, THE ADDITIONAL PROTOCOL TO THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA, ALSO KNOWN AS THE TREATY OF TLATELOLCO

SEPTEMBER 22, 1981

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PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA

TUESDAY, SEPTEMBER 22, 1981

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 9:36 a.m., in room 4221, Dirksen Senate Office Building, Hon. Charles H. Percy (chairman of the committee) presiding.

Present: Senator Percy.

The CHAIRMAN. I want to welcome our distinguished guests and witnesses this morning.

This morning the committee will hear testimony from the Reagan administration concerning additional Protocol I to the Treaty for the Prohibition of Nuclear Weapons in Latin America, also known as the Treaty of Tlatelolco, which has been before the committee since 1978.

This protocol extends the applications of the treaty to all territories within the Latin American area, and would obligate the United States to refrain from testing, storing, deploying or using nuclear weapons in Puerto Rico, the Virgin Islands, and on the Guantanamo Naval Base. Its importance also rests on the fact that the overall Treaty of Tlatelolco does not enter into force until all the states eligible to ratify this protocol have done so.

It is my understanding that the administration will express its unqualified support for the ratification of this protocol with certain understandings and declarations to be discussed this morning.

We will hear from witnesses representing various agencies of the U.S. Government having responsibility in the arms control area: Eugene Rostow, Director of the Arms Control and Disarmament Agency; Davis Robinson, legal adviser, Department of State; Sheila Buckley, Director for Multilateral Negotiations, Office of the Secretary of Defense; and Rear Adm. Robert C. Austin, Deputy Director for International Negotiations, Joint Chiefs of Staff.

Gentlemen, and lady, I welcome you very much to the committee, and note that this is the first opportunity we have had with the administration to move forward in a concrete way with the agenda of arms control. I hope we will continue to see more and more of the administration in this capacity.

I would like to say that not only have I a deep and abiding interest in arms control, but I believe that everyone associated with that activity recognizes the importance of it. President Reagan has enunciated very clearly his policy. He is not satisfied with arms limitation. He wants arms reduction. There are certain qualifiers to that with which we all agree, and that are

understandable, but we do have an impatience about moving ahead, and it is our job to see that we do move ahead. I am very pleased indeed, particularly in this area, which involves our hemisphere and involves a treaty, that we are taking if off the back burner and putting it on the front burner, and facing right up to it.

We have had treaties languishing in this committee without action of several decades, the Genocide Treaty, for instance. Are we going to face up to them or not? We are unwilling to see a lot of this stuff just sit around and take no action on it. This committee is taking a look at every single treaty. We are going to ask the administration for their judgments. We are going to decide ourselves what we should do about them in consultation with the administration—not always agreement, but certainly consultation—and we are going to clean up this agenda.

And certainly, taking this one first as a high priority, I think, is very fine, very much in keeping with our thinking, and I commend you very much indeed, Mr. Rostow, for the position that you have taken and the leadership you have exercised.

Would you lead off, please?

STATEMENT OF EUGENE ROSTOW, DIRECTOR, ARMS CONTROL AND DISARMAMENT POLICY

Mr. ROSTOW. Thank you, Mr. Chairman.

I hope we will be back before you with a succession of treaties and other agreements requiring ratification.

It is good to be here before you on behalf of the administration in support of the ratification of Protocol I of the Treaty for the Prohibition of Nuclear Weapons in Latin America, known as the Treaty of Tlatelolco. In the statement on nuclear proliferation policy made by the President on July 16, 1981, he cited as a specific U.S. objective continued support for adherence to the Treaty of Tlatelolco by those countries for which it has not yet entered into force. He also announced that he would promptly seek the Senate's advice and consent to the ratification of Protocol I of the treaty.

As you know, the Treaty of Tlatelolco is the first treaty to seek to establish a nuclear weapons free zone in any populated region of the world. It is currently in force for 22 Latin American and Caribbean states. The idea of establishing a nuclear weapons free zone originated in a Brazilian proposal in 1962. It was followed by a joint resolution in 1963 by the Presidents of Bolivia, Brazil, Chile, Equador, and Mexico, supporting the establishment of such a zone. This joint declaration received the support of the United Nations General Assembly in 1963. The United States voted in favor of the General Assembly resolution. Detailed and extensive negotiations among the Latin American nations followed, culminating in regional meetings in Mexico City with all the countries of the region for signature of the treaty on February 14, 1967.

The treaty has entered into force for most Latin American states, but is not yet in effect for Argentina, Brazil, Chile, and Cuba. We believe that U.S. ratification of Protocol I would improve the prospects toward complete entry into force of the treaty regime throughout the region. U.S. action on Protocol I also would remove a pretext for Cuba not adhering to the treaty.

In addition to the basic treaty, which would prohibit indigenous development of nuclear weapons by Latin American states, there are two proposals. These are designed to keep the territories of the region affected by the treaty and its protocols free of nuclear weapons by preventing their deployment in such territories by states outside the treaty zone. Additional Protocol II involves an undertaking by nuclear weapons states not to use or threaten to use nuclear weapons against the parties to the treaty, nor to contribute in any way to acts involving a violation of the basic provisions of the treaty. The United States ratified additional Protocol II in 1971. It is the only post-World War II arms control agreement adhered to by China, France, Great Britain, the United States, and the Soviet Union.

Additional Protocol I, which is before you today, represents the final step in formal U.S. support for the nuclear free zone established by the treaty. Under the protocol, those states outside the treaty zone undertake to apply the denuclearization provisions of the treaty to their territories within the zone. For the United States, the territories primarily involved are Puerto Rico, the Virgin Islands, and the military base at Guantanamo, as you observed, Mr. Chairman. The United Kingdom and the Netherlands have already adhered to Protocol I; France has signed the treaty and ratification is under consideration by the French Government. U.S. ratification of Protocol I is an essential step for full entry-into-force of the treaty throughout the region.

Full entry-into-force of the Treaty of Tlatelolco is clearly in our nonproliferation and national security interests. United States ratification will help maintain progress toward full entry-into-force of this important treaty, will demonstrate our continued commitment to prevent the spread of nuclear weapons, and will also emphasize our belief that the Tlatelolco Treaty regime is an important element of U.S. nonproliferation policy. Like the Treaty on the Non-Proliferation of Nuclear Weapons, the Tlatelolco Treaty commits adherents to refrain from developing nuclear weapons and to apply IAEA [International Atomic Energy Agency] safeguards. An important factor for some significant Latin American states which have expressed political objections to adhering to the NPT [Non-Proliferation Treaty] is that Tlatelolco provides the most promising alternative to the NPT to fulfill the important nonproliferation goal of ensuring comprehensive IAEA safeguards on the nuclear programs of all Latin American nations.

I have mentioned the benefits of the treaty as an alternative method of achieving the objections of the Non-Proliferation Treaty within the region. I would also like to note some additional features of arms control significance unique to this regional initiative.

First, it prohibits the testing of nuclear weapons in the territories of the parties within the zone. Argentina, Barbados, Colombia, Grenada, Guyana, Haiti, Jamaica, Paraguay, and Surinam are not parties to the Limited Test Ban Treaty. Tlatelolco offers a way to fill this gap. In fact, it goes beyond the Limited Test Ban Treaty by prohibiting even underground testing in Latin America.

Second, the treaty goes beyond the NPT by prohibiting the receipt, storage, installation, or deployment of nuclear weapons in the territory of treaty parties or in the territories covered under

Protocol I. Thus, the treaty would oblige any party to the treaty to refuse to allow any outside nations to install, store, or deploy nuclear weapons within the territories of that state.

Third, in terms of verification, the treaty not only requires IAEA safeguards agreements, but establishes a regional control organization, OPANAL, with the right to obtain information from the treaty parties concerning their nuclear activities, and to conduct special inspections in the territory of a party.

The Treaty of Tlatelolco is also very important in terms of U.S. national security interests in another perspective. The treaty and its additional protocols prohibit the manufacture, development, deployment, or stationing of nuclear weapons by any country within the region, as well as any such action by the nuclear weapons states or any state with responsibility for territories within the zone. As you know, the negotiating history of the treaty makes it clear that transit and transport rights of noncontracting parties of the treaty or its protocols. This fact is reflected in the U.S. statement which accompanied our ratification of Protocol II in 1971.

The Treaty of Tlatelolco is dedicated to preventing the spread of nuclear weapons, and provides a means to enhance regional security. It is a far-sighted effort on the part of Latin American nations, and is a major contribution to international security and to nonproliferation goals. A peaceful and secure world is possible only when nations can work together to create a more stable environment. Tlatelolco is an outstanding example of a major step toward that goal, and it serves as a potential model for the establishment of similar agreements in other regions of the world. We are now actively studying the possibilities of encouraging the Egyptian initiative for a nuclear weapons free zone in the Middle East. Our preliminary explorations of the subject indicate that the idea has promise as an important countermeasure against proliferation tendencies.

Our ratification will complete formal U.S. participation in the treaty regime, and will promote hemispheric solidarity, good relations with our Latin American neighbors, and will provide significant benefits for national security and nonproliferation objectives. I recommend that the Senate take prompt and favorable action on Protocol I of the Treaty of Tlatelolco in recognition of this important regional arms control initiative, and for the important benefits it represents to the United States.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Do other witnesses have prepared statements?

Mr. ROBINSON. Yes, sir, we do, Mr. Chairman.

The CHAIRMAN. Very well. Mr. Robinson, why don't you begin?

STATEMENT OF DAVIS R. ROBINSON, LEGAL ADVISER, DEPARTMENT OF STATE, ACCOMPANIED BY HARRY R. MARSHALL, JR., ACTING ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

Mr. ROBINSON. Thank you, Mr. Chairman.

It is a pleasure to appear here today to testify before you with regard to the Treaty of Tlatelolco and its protocols.

On a personal note, I might say that when I was a Foreign Service officer in the late 1960's, I was assigned to the Office of the General Counsel of the U.S. Arms Control and Disarmament Agency, where I had the opportunity to work extensively on the treaty and its protocols. I find it one of life's coincidences to be here before you this morning on this subject, especially since my son was born on the day that President Johnson announced that the United States would sign Protocol II to the treaty, my daughter was born on the day Protocol II was ratified by the United States, and my confirmation hearings before this committee 10 years later to be the legal adviser were held on the very day that President Reagan announced his support for the ratification of Protocol I.

I can only wonder where the Treaty of Tlatelolco will turn up next in my life. [General laughter.]

I am very pleased, Mr. Chairman, to be able to join Mr. Rostow today in supporting the ratification by the United States of Protocol I to the Treaty of Tlatelolco.

Mr. Rostow has explained the importance of this treaty to the overall arms control and nonproliferation objectives of this administration. I would like to offer some additional explanation of the obligations contained in Protocol I, and of the manner in which U.S. ratification of this protocol would affect other U.S. interests.

A separate statement by Acting Assistant Secretary of State Marshall concerning the relationship of the treaty to the administration's efforts on both nonproliferation and peaceful nuclear cooperation also will be submitted for the record. Mr. Marshall is here with us, and is available for questioning.

As Mr. Rostow has noted, the United States already is obligated by reason of its ratification in 1971 of Protocol II to the Treaty of Tlatelolco to refrain from contributing to any violations of the basic treaty obligations by the parties to the treaty within their territories. As a party to Protocol II, the United States has undertaken not to use or threaten to use nuclear weapons against treaty parties.

Protocol I deals with those territories which lie within the treaty's geographical zone but for which states outside the zone have international responsibility de jure or de facto. Of the three other states which are eligible to ratify Protocol I, as Mr. Rostow has noted, the United Kingdom and the Netherlands already have ratified; France has signed and is presently considering ratification. In the case of the United States, which signed Protocol I in 1977, the primary territories are Puerto Rico, the Virgin Islands, and Guantanamo. However, there are in addition a few islands which would also be covered, and we will submit a detailed list of them for the record.

U.S. Territories Covered by Tlatelolco Protocol I

[supplied by the department of state]

Puerto Rico; U.S. Virgin Islands; Guantanamo Base; Navassa Island; Serranilla Bank; and Bajo Nuevo (Petrel Island).

Protocol I obligates states which ratify it to apply the basic treaty provisions on denuclearization to those territories within the zone for which they are responsible. Specifically, this would mean that the United States would be obligated to refrain from any

testing, use, manufacture, storage, or deployment of nuclear weapons in Puerto Rico, the Virgin Islands, or Guantanamo. The protocol in no way would affect the transit and transport of U.S. vessels or aircraft through these territories or adjacent waters and air space, whether or not those vessels or aircraft carry nuclear weapons. This, of course, includes port visits, aircraft landings, and overflight.

Following this committee's hearings on Protocol I in 1978, the State Department Legal Adviser's Office submitted to the committee a comprehensive legal and historical analysis of this matter, which concluded that the treaty and its negotiating history clearly establish that transit and transport through the zone is in no way affected by the treaty or its protocols. This analysis also concluded that the 1978 Soviet statement at the time of the signature of the Soviet Union of Protocol II, which conceded this interpretation of the negotiating history, but made a political statement of opposition to such transit, had no legal validity or effect.

We have reviewed that analysis, and I am satisfied that it is correct. In particular, I see no basis on which any other government could validly argue that U.S. ratification of Protocol I would affect or restrict the transit and transport by U.S. forces of the territories covered by the treaty or by Protocol I.

Nonetheless, to make explicit U.S. rights in this regard, we have recommended that the Senate approve a series of declarations and understandings which expressly reiterate that our adherence to the protocol will not affect either our exercise of navigational rights under international law or our right to grant or deny transit and transport privileges to our own or any other vessels or aircraft.

In particular, Secretary Haig's letter of August 27 to you, Mr. Chairman, requested that the understanding proposed by the previous administration on this point be strengthened by language making clear that transit and transport rights are protected, irrespective of the cargo or armaments of the vessel or aircraft in question. U.S. ratification of the protocol would be expressly on the basis of these declarations and understandings.

In short, our ratification of Protocol I would not preclude any options of serious interest to us. On the other hand, U.S. adherence to the protocol would offer a number of benefits to the conduct of our foreign policy. One, it would demonstrate the seriousness of our attitude toward the problems of nuclear proliferation in the Western Hemisphere, and strengthen our ability to deal with potential proliferation situations in Latin America.

Two, it would complete our formal adherence to the purposes of the Treaty of Tlatelolco, and thereby remove a source of possible irritation or criticism in our relations with those Latin American countries to whom the treaty is important.

Three, it would make it impossible for the Soviets, Cubans, and others to portray the United States as an obstacle to the fulfillment of the Tlatelolco process.

Four, it would be an important step toward the possible future full entry-into-force of the treaty throughout the region, which would provide an important assurance against Soviet nuclear deployments in Latin America, as well as against the emergence of indigenous nuclear weapon states.

For these reasons, Mr. Chairman, the Reagan administration strongly supports the ratification by the United States of Protocol I to the Treaty of Tlatelolco, and I urge this committee to take prompt and favorable action on it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much indeed. Without objection, we will insert Mr. Marshall's statement in the record immediately following your statement, Mr. Robinson.

Mr. ROBINSON. Thank you, Mr. Chairman.

[Mr. Marshall's prepared statement follows:]

PREPARED STATEMENT OF HARRY R. MARSHALL, JR.

Mr. Chairman; The President, in his July 16, 1981, statement on United States nuclear non-proliferation and peaceful cooperation policy, declared that one of the most critical challenges to this Nation is the need to prevent the spread of nuclear explosives. He described nuclear weapons proliferation as posing a severe threat to international peace, regional and global stability, and the security interests of the United States and other countries.

Among the efforts announced by the President on July 16 to reinforce achievement of our non-proliferation objectives is continued United States support for adherence to the Treaty of Tlatelolco by countries that have not yet accepted it. The President also announced that he would promptly seek the Senate's advice and consent to ratification of Protocol I of the treaty.

Secretary Haig, in his letter of August 27 to Chairman Percy, requested favorable action on additional Protocol I to the Treaty of Tlatelolco by this committee at the earliest convenient date, and stressed that its ratification would make an important contribution to the furtherance of United States non-proliferation policies. I wish to elaborate on the Secretary's statement and point up the relationship of the treaty to both our non-proliferation and peaceful nuclear cooperation efforts. National security aspects will be covered more fully in the Department's oral presentation and other testimony.

The treaty, which was opened for signature on February 14, 1967, established the first nuclear weapons free zone in any populated area of the world. Its parties undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories the testing, use, manufacture, production, acquisition, receipt, storage, installation, deployment and any form of possession of any nuclear weapons. The treaty is the first arms control or disarmament agreement to set up a system of control, including a permanent monitoring agency, International Atomic Energy Agency safeguards applied to nuclear activities, presentation of reports and on-side inspections. Under additional Protocol II of the treaty (which has been ratified by China, France, the United Kingdom, the United States and U.S.S.R.) the nuclear weapons states undertake to respect fully the statute of denuclearization of Latin America for warlike purposes, as set forth in the treaty, as well as not to use or threaten to use nuclear weapons against any treaty party; they also undertake not to contribute to violation of the treaty. Additional Protocol I is open to states which, de jure, or de facto, are internationally responsible for territories which lie within the limits of the geographical zone established by the treaty; of the four such states, the Netherlands and United Kingdom have ratified Protocol I, but France and the United States so far have not done so.

No Latin American state thus far has developed or possesses nuclear weapons. It is the purpose of the treaty to preserve this state of regional nuclear non-armament. Introduction of nuclear weapons into Latin America could precipitate a devastatingly costly arms race among the nations of the region, with potentially calamitous results for their political and economic stability and that of the region as a whole. Introduction of such weapons also could seriously affect relations among the major nuclear powers. The treaty therefore serves not only the interests of the Latin American nations themselves, but also the interests of the international community and, clearly, those of the United States.

When in effect, the treaty would provide the United States with two direct benefits: It would further our regional and global non-proliferation aims; and it would serve our national security by deterring other nuclear weapons states from stationing such weapons adjacent to us to the south.

In his July 16 statement, the President also stressed the commitment of the United States to cooperate with other nations in the peaceful uses of nuclear

energy, under a regime of adequate safeguards and controls—which the President emphasized are essential to our non-proliferation goals. Some Latin American states have made considerable progress in the development and use of nuclear technology for peaceful purposes. We wish to maintain close ties in this field with our Latin American neighbors, and we want to show that we can be a reliable supplier to the expanding Latin American market for peaceful nuclear material, equipment and technology.

One demonstration of the importance of the Treaty of Tlatelolco is that parties to this treaty, similarly to parties to the non-proliferation treaty, have publicly declared their commitment to an IAEA safeguards regime on their nuclear activities. We accept these commitments as satisfying relevant criteria contained in the Atomic Energy Act, as amended, for approval of licenses to export U.S. nuclear material, equipment and technology to such countries. Safeguards implemented by the IAEA under an agreement pursuant to article XIII of the Treaty of Tlatelolco would satisfy our legal requirement for safeguards on items which we supply to Latin American nations in the same manner as do IAEA safeguards pursuant to the NPT.

Moreover, adherence to the Treaty of Tlatelolco weighs significantly in our general willingness to conclude such arrangements for peaceful nuclear cooperation with nations which are party to the NPT. Adherence by one of our sister American republics to the Treaty of Tlatelolco, including waiver of the treaty into force and conclusion of an appropriate safeguards agreement, represents from our standpoint a non-proliferation commitment of comparable significance in our decisions regarding U.S. peaceful nuclear cooperation. For example, one of the new agreements for cooperation in peaceful uses of nuclear energy which we have concluded recently, and which the Congress has before it for review, was our agreement with Colombia, a full party to the Treaty of Tlatelolco. Another is that with Peru, which is party to both this treaty and to the NPT. In this way, the Treaty of Tlatelolco allows us to cooperate with other nations in peaceful uses of nuclear energy, and to supply nuclear material, equipment and technology under conditions which strengthen the international non-proliferation regime and which satisfy the legal requirements Congress has established for our peaceful nuclear cooperation with other nations.

It is all the more important at this time that we strengthen the non-proliferation side of the equation and take all steps open to us to ensure that an effective non-proliferation regime, as is to be provided by the treaty, is put in place and begins to function throughout Latin America.

In this regard, we have taken measures to encourage adherence to the Treaty of Tlatelolco which in some respects parallel our continuing efforts to encourage all nations to adhere to the NPT. Programs which the United States has established for assistance through the IAEA, provided preferentially or exclusively for the benefit of parties to the NPT, are available on a comparable basis to full parties to the Treaty of Tlatelolco with an appropriate safeguards agreement in place. These programs include financial support and gifts in kind in support of approved IAEA programs of technical assistance for such countries, and benefits from the annual gifts made by the Department of Energy to the IAEA of nuclear materials valued at up to $50,000 for peaceful nuclear research uses. In our ongoing diplomatic efforts to strengthen the international non-proliferation regime by encouraging adherence to the multilateral instruments that form so important a part of that regime, we urge that nations eligible to do so become full parties to the Treaty of Tlatelolco, as we urge them and others to adhere to the NPT.

A decisive further step which our own Nation can take in this direction will be our ratification of Protocol I. This will provide a clear reaffirmation of our long-standing commitment to the goals of the treaty and our determination to see them realized. U.S. ratification of this remaining protocol will strengthen our hand in convincing key Latin American states for which the treaty is not yet in effect to become full parties to the treaty; it would remove a possible excuse for some to mark time while the United States itself still has not completed the full ratification process. Such a step on our part would strengthen our relations with our Latin American neighbors whose interest in the treaty's full implementation is keenest.

The full entry into force and effect of the treaty throughout its entire zone of application would be a major stride forward in our global non-proliferation and arms control efforts. It also would represent a significant step in implementation of the President's policy of encouraging cooperation with other Nations, particularly the other American republics, in peaceful applications of nuclear energy in a manner which will further strengthen both international non-proliferation and peaceful economic, scientific and technological development.

The CHAIRMAN. We will hear from Ms. Buckley next.

STATEMENT OF SHEILA BUCKLEY, DIRECTOR FOR MULTILATERAL NEGOTIATIONS, OFFICE OF THE SECRETARY OF DEFENSE

Ms. BUCKLEY. Thank you, Mr. Chairman.

I am here on behalf of the Secretary of Defense in support of U.S. adherence to additional Protocol I to the Treaty of Tlatelolco. My remarks will be brief, and will focus on the strategic and the security implications of the protocol.

The Treaty of Tlatelolco and its two additional protocols prohibit the introduction of nuclear weapons into the Latin American region. The United States adhered to Protocol II of this treaty in May of 1971, wherein we undertook not to use or threaten to use nuclear weapons against the contracting parties to the treaty.

As this committee is aware, the Department of Defense initially was concerned that accession to Protocol I might restrict U.S. rights of transit and of innocent passage of vessels and aircraft carrying nuclear weapons in waters and airspace within the zone. The statements of understanding proposed to accompany Protocol I at the time our instrument of ratification would be deposited were developed in response to these concerns.

We are satisfied that U.S. adherence to Protocol I with these understandings does not affect the transit of U.S. vessels and aircraft carrying nuclear weapons in the zone of application, including port visits, aircraft landings, and overflight.

The Department of Defense endorsed Protocol I with these understandings when we testified before this committee in 1978 in support of ratification. During the recent executive branch review of U.S. nonproliferation policy, which resulted in President Reagan's announcement of support for ratification of Protocol I, the understandings were carefully reviewed and language was proposed to make them even more explicit regarding transit rights.

The Department of Defense has reviewed the particular contribution of the Treaty of Tlatelolco to our overall security and its specific impact on our military operational requirements. Freedom of navigation is a critical element of our national security, particularly with respect to our requirement for military flexibility. We are satisfied that our navigation rights within the Latin American nuclear weapons free zone are in no way affected by the treaty or its protocols.

The proposed understandings, as amended, clearly reflect this point.

From the security standpoint, therefore, the Department of Defense has determined that U.S. adherence to Protocol I with the understandings will not be inconsistent with U.S. rights and freedoms under international law, nor will adherence unduly restrict or impair U.S. rights with respect to its defense or the defense of its allies.

We further believe that U.S. adherence to Protocol I would make an important contribution to the advancement of our nonproliferation objectives. Further nuclear proliferation would threaten our national security. U.S. support of Protocol I will bring the Treaty of Tlatelolco a step closer to full entry into force, and may motivate other states to reconsider their reservations about full treaty adherence.

In sum, the Department of Defense strongly recommends that the Senate advise and consent to adherence to Protocol I with the accompanying statements of understanding.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very kindly.

Admiral Austin.

[Admiral Austin's biographical data follows:]

BIOGRAPHICAL DATA OF REAR ADM. ROBERT C. AUSTIN

Rear Admiral Robert C. Austin was born in Cleveland, Ohio, September 5, 1931. After graduating from Maury High School in Norfolk, Virginia, he enlisted in the Navy on October 7, 1948, and obtained a fleet appointment to the Naval Academy from the Secretary of the Navy in June 1950.

Upon graduation from the Naval Academy, he was commissioned Ensign in June 1954. He served as Engineer Officer on board the U.S.S. *Noa* (DD 841) until he entered the six-month Naval Submarine School at New London, Connecticut. In July 1957, he reported to the U.S.S. *Thornback* (SS 418) where he served as Supply Officer, Weapons Officer, Engineer Officer, Operations Officer and Navigator. In July 1960, he was enrolled in the Advanced Weapons Engineering Curricula for Air/Space Missiles Systems at the U.S. Naval Postgraduate School in Monterey, California. He received a Master of Science degree in Physics in May 1963 after completing a three year postgraduate level course. From June to October 1963 he served as Executive Officer of U.S.S. *Grampus* (SS 523). He then entered Nuclear Power Training and subsequently served as Navigator aboard U.S.S. *Triton* (SSN 586) and Executive Officer of the U.S.S. *John Adams* (SSBN 620) Gold crew. He reported as prospective Commanding Officer of U.S.S. *Finback* (SSN 670) at Newport News Shipbuilding and Drydock Company on 20 December 1968. Following construction, Rear Admiral Austin commanded *Finback* until April 1972. He was awarded a Legion of Merit during that tour. He next reported to Commander Submarine Force, U.S. Atlantic Fleet where he served for two years as the Prospective Commanding Officer Instructor and head of the Advanced Tactical Training Division. He was then assigned a squadron command as Commander Submarine Development Group TWO from May 1974 to July 1976. Following squadron command, he assumed command of Naval Submarine School at Groton, Connecticut, on 6 August 1976, where he served until August 1978. Rear Admiral Austin reported to Commander Submarine Force, U.S. Atlantic Fleet for a second tour from August 1978 and served as Deputy Chief of Staff for Operations and Plans until June 1979 when he was appointed Chief of Staff. He was selected for flag rank in January 1980. In July 1980, Rear Admiral Austin was assigned to the Organization of the Joint Chiefs of Staff as the Assistant Deputy Director, International Negotiations, Plans and Policy Directorate. He also served as the Deputy Commissioner, U.S. Component of the U.S.-U.S.S.R. Standing Consultative Commission.

Rear Admiral Austin assumed the position of Deputy Director International Negotiations, J-5, Organization of the Joint Chiefs of Staff on 14 August 1981.

Rear Admiral Austin's decorations include the Legion of Merit with two Gold Stars, the Meritorious Service Medal, the Navy Expeditionary Medal, Navy Occupation Service Medal with European Clasp, the Navy Unit Commendation Ribbon, National Defense Service Medal and the Armed Forces Expeditionary Medal.

Rear Admiral Austin is married to the former Joyce Bisese of Norfolk, Virginia. They have four children, Susan, James, Robert Jr., and Cecilia.

STATEMENT OF REAR ADM. ROBERT C. AUSTIN, U.S NAVY, DEPUTY DIRECTOR FOR INTERNATIONAL NEGOTIATIONS, JOINT CHIEFS OF STAFF

Admiral AUSTIN. Thank you, Mr. Chairman.

I welcome the opportunity to appear before this committee to discuss the military implications of additional Protocol I to the Treaty for the Prohibition of Nuclear Weapons in Latin America, more commonly known as the Treaty of Tlatelolco.

As you know, in 1978, General Graham appeared on behalf of the Joint Chiefs of Staff before this committee. The Joint Chiefs of Staff have continued to support Protocol I since that initial hearing.

During the most recent review, it was determined that the originally proposed declarations and understandings regarding transit and transport privileges could be improved, as has been previously mentioned in testimony here this morning, by making them more explicit. For this reason, it was recommended that they be amended slightly.

This change has been requested by the Secretary of State and supported by the Joint Chiefs of Staff. It will emphasize the international legal right of a state to grant or deny transit and transport privileges to its own or any other vessel or aircraft, irrespective of cargo or armament.

The Joint Chiefs of Staff support additional Protocol I of the Treaty of Tlatelolco as limiting the spread of nuclear weapons to areas hitherto free of them. It is their understanding that additional Protocol I, and the accompanying supplemental statements, will not affect the rights of the United States, under International Law, regarding the exercise of freedom of the seas or regarding passage through, or over, waters subject to the sovereignty of the state.

In summary, the Joint Chiefs of Staff continue to support the additional Protocol I of the Treaty of Tlatelolco with the above understandings.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much indeed.

Are there any further comments anyone would like to make?

[No response.]

The CHAIRMAN. Because the Joint Chiefs have testified in favor of this, Mr. Rostow, I would like to go back to try to clear up a little misunderstanding which might have occurred as the result of an Evans and Novak column in 1978 when it was disclosed that Mr. Brzezinski, President Carter's National Security Adviser, had written to Secretary of Defense Brown, instructing the Joint Chiefs of Staff to give "complete and unequivocal support" to Protocol I of the treaty. This has raised the question, obviously, of the validity of the Joint Chiefs of Staff's testimony. We have never really had that clarified as to whether the Joint Chiefs of Staff are under instructions by an incumbent administration, or whether they arrive at a judgment based upon their own best judgment and are free to testify before Congress to that effect.

We have a new administration, so you must be aware of this difficulty which is a problem Senators Sparkman and Church grappled with at the time. This committee was denied access to National Security Council memoranda.

Is there anything you can say which would clarify what happened in the past, and whether the Joint Chiefs had independently arrived at their own conclusion, which concurred simply with that position taken by Mr. Brzezinski, and what the position of this administration is on judgments arrived at by the Joint Chiefs in their testimony before this committee?

Mr. ROSTOW. I would be happy to answer that question, Mr. Chairman, and Admiral Austin is here to supplement my answer as he may desire.

I have reviewed that contretemps of the past. I haven't investigated it thoroughly, but I am thoroughly satisfied myself that the judgment of the Joint Chiefs at the time was arrived at before Mr.

Brzezinski sent his celebrated memorandum. I do not believe that that judgment was affected by the memorandum, and I know for a fact that in all my experience with the Government, the Joint Chiefs of Staff never have been under instruction, and certainly they are not under instruction in this administration.

I know that the judgment of the Joint Chiefs supporting this initiative, recognizing the importance of the Treaty of Tlatelolco both in itself and as a possible model for use in other areas of the world, is a strongly held conviction on their parts which I have discussed with them directly.

Furthermore, I can assure you that I myself never would take the responsibility of recommending a treaty of this kind unless I were satisfied that it did not interfere in any way with what the military authorities of the United States deem necessary for the security of the United States.

The CHAIRMAN. Then it is very clear that the judgments arrived at by the Joint Chiefs in this case are independent judgments, and that they stand on those. Do the Joint Chiefs of Staff concur with the understandings which the Department of State proposes in connection with the ratification of Protocol I?

Admiral AUSTIN. I will answer that, Senator.

Mr. Chairman, the Joint Chiefs of Staff do support the understandings which the State Department has presented in conjunction with their request for advice and consent of the protocol to this treaty.

The CHAIRMAN. Because we have so many conflicts in scheduling this morning, other committee members are unable to be here.

I would like to give you a chance, Admiral, to comment on the independence of the Joint Chiefs of Staff in the Reagan administration, which will be a statement on their behalf for all committees of the Senate, though there may well have been such a statement made already before the Armed Services Committee.

Admiral AUSTIN. Yes, sir. I can speak directly to the issue at hand. That was worked within the Joint Chiefs of Staff in accordance with the procedures that we have. It is an indpendent view expressed to you this morning that they developed, which is incorporated in the testimony that I have given to you. It is simply that free and independent legal obligation of theirs to provide such testimony, which I have provided to you on this occasion.

The CHAIRMAN. Admiral Austin, in your answer, you have limited it to this particular issue. Would you want to broaden that statement, to rephrase your understanding of the policy of the Joint Chiefs of Staff within the Reagan administration on all issues, when you are brought before the Congress to testify on a particular issue, such as this issue?

Admiral AUSTIN. I would be glad to. Of course, this is the issue about which I have firsthand knowledge, but I know as a matter of our general procedure that within the Joint Chiefs of staff our handling of matters such as this, certainly we have strong adherence to their independent authority to testify over here on the Hill by giving you their views on national security matters.

The CHAIRMAN. Would you on behalf of the Chairman of the Joint Chiefs be able to accept responsibility to advise this committee if at any time in the Reagan administration you receive

instructions otherwise, so that we then might be able to judge whether your statements before the committee on any matters affecting the jurisdiction of this committee are independently arrived at or have been arrived at, shall we say, in consultation with the White House, or any other members of the Cabinet, for instance?

Admiral AUSTIN. I would foresee that I would have no problem whatsoever, Senator, in advising the chairman on such a matter.

The CHAIRMAN. Well, I think the answers of both of you will certainly clarify for this administration then the position, and I would not expect anything differently, nor would I feel that such instructions would be issued by anyone that I know of in the executive branch of Government, or an attempt to instruct the Joint Chiefs, because we do value their expertise highly. We do have to weigh sometimes which judgments we will accept, and sometimes the political balance estimate has to be the controlling element. We value the relationship that we have and the ability to get such independent judgment, and let the chips fall where they may in the final decision that has been made.

The CHAIRMAN. Mr. Rostow, you have been quoted in the press as suggesting that the Treaty of Tlatelolco be a model for a possible nuclear free zone in the Middle East. I wonder if you would elaborate on that concept.

Mr. ROSTOW. Yes, I would be happy to.

As I have said before, I think before this committee or the Senate Armed Services Committee, as I commented in my prepared statement, have been considered the possibility of a nuclear weapons free zone in the Middle East ever since the Israeli raid on Iraq, and indeed since the Iranian raid on that same facility in Iraq which preceded the Israeli raid.

The President said in his statement on nonproliferation policy that the restoration of stability both globally and regionally is an indispensable predicate to achieving the goals of our nonproliferation policy. If proliferation of nuclear weapons spreads beyond a certain point, it is our policy and our conviction that the political systems of the world will become extremely unstable, almost unpredictable and volatile, and that the attacks both by Iran and by Israel on the nuclear facilities in Iraq dramatize and represent that danger. So, we have undertaken to consider a large-scale counteroffensive against proliferation in regions which are so affected, both by attempting to promote stability and peace and by encouraging the nations of such regions to engage in exercises of the kind which resulted in Latin America entering into this extraordinary and pioneering treaty.

We have been encouraged by our preliminary explorations of the possibility, and now are studying the problem in greater detail.

I believe that really is about as far as we have gone, Mr. Chairman. I would be happy, of course, to keep you informed as we move ahead.

The CHAIRMAN. Fine.

Let me address my next series of questions to you, Professor Rostow, and then you can turn them over to any member of the distinguished panel that you wish. Let me go through them quickly so that we have as complete a record as possible.

Have the French taken any steps toward ratifying Protocol I? If so, what have they done? Do you have any reason to doubt that the French will adhere to Protocol I?

Mr. ROSTOW. Mr. Robinson.

Mr. ROBINSON. Mr. Chairman, I understand that the French have signed Protocol I, and that they are currently considering whether to ratify Protocol I as well.

The CHAIRMAN. Argentina has not yet ratified the treaty, and must do so for the treaty to come into full force. What is the Argentine attitude toward ratification? Are we actively seeking Argentine ratification?

Mr. ROSTOW. Yes. The Argentine Government has on several occasions said that it would ratify following this act of our own, and finally completing the ratification of Protocol I, we will undertake a friendly but active dialog with the Argentinian Government on this subject. It is a matter, we think, of very great importance to the effectiveness of the treaty and the stability of the region. We believe this should be completed. We will be in a much better position to pursue those talks after taking this action on ratification.

Mr. MARSHALL. Mr. Chairman, I might be able to supplement that by pointing out that earlier this spring, when Assistant Secretary Malone and I were in Buenos Aires, we talked about this very issue of ratification with people in the Foreign Ministry there, and it was a more receptive discussion than had occurred previously, so I would think that with this ratification of Protocol I, we will definitely have a better environment to achieve this objective of Argentine ratification.

The CHAIRMAN. May I ask you to suspend for just a moment? I have a telephone call from Tom Clausen in San Francisco with the World Bank. I thought someone else would be here to take over the Chair, but unfortunately we will have to recess for 2 or 3 minutes.

[Whereupon, a brief recess was taken.]

The CHAIRMAN. I have one last question on Argentina. Dr. Rostow, would you say that our improved relationships with the Argentine in other areas will help us in moving the Argentine in a direction which will be for the good of Argentina, for the good of the hemisphere, and certainly in the best interests of the United States?

Mr. ROSTOW. One could certainly hope so. That is the belief and expectation, and we shall act on it.

The CHAIRMAN. Very good.

We have a foreign assistance bill before us. It may be on the floor tomorrow. There is one provision in there on Argentina which may be controversial. I think this comment by you will be very helpful.

I have a couple of questions on Cuba. Cuba has neither signed nor ratified the treaty, and Cuba's ratification is also necessary for full entry into force. Has Cuba given any indication of its intentions?

Mr. ROSTOW. Well, Cuba has on several occasions issued propaganda statements, what were clearly propaganda statements, saying it might ratify or would ratify some day upon the satisfaction of some impossible and absurd conditions, but it also privately

has asked a number of questions on the subject, and has therefore shown interest in the possibility of ratification.

It has made our delay in ratifying Protocol I one of its public excuses for not proceeding toward ratification, and therefore the action of the United States in ratifying Protocol I will remove at least one of its propaganda points in justifying its not signing and ratifying the treaty.

That, I think, is about the sum total of the kind of intention that has been manifested so far by Cuba.

The CHAIRMAN. How does Cuba go about ratifying this? What formal steps must it take? In a sense, is it just a judgment of one person? What formalities would the Cubans go through to actually ratify?

If you don't know enough about the technical procedure, then I would appreciate an answer by the State Department for the record.

Mr. ROSTOW. Mr. Robinson.

Mr. ROBINSON. I am not aware of those procedures, but we will supply a statement for the record.

The CHAIRMAN. We will leave the record open for that response.

[The information referred to follows:]

PROCEDURE FOR RATIFICATION OF THE TLATELOLCO TREATY BY CUBA

[SUPPLIED BY THE DEPARTMENT OF STATE]

According to Articles 25 and 26 of the Treaty, the Treaty is open indefinitely for signature by any Latin American Republic, and is then subject to ratification by the signatory state in accordance with its constitutional procedures. The instrument of ratification must be deposited with the Government of Mexico, which is designated as the Depositary Government.

The internal procedure which Cuba would follow in ratifying the Treaty is, of course, matter for the Cuban Government to decide. We understand that treaties have been formally ratified in behalf of Cuba by the President of the Republic following approval by the National Assembly.

The CHAIRMAN. Has the United States approached the Cuban Government recently on this point, either directly or indirectly? If so, to what effect?

Mr. ROSTOW. Well, we have exchanged these questions, though not too recently, and we have talked with other states on the subject, urging them to encourage the Cubans to take it seriously. We have talked with the Soviet Union, Mexico, and Jamaica, among others.

Mr. Marshall, is there anything you would like to add to that?

Mr. MARSHALL. I would just point out that when we have had occasions to talk to the Soviets, in such places as the IAEA in Vienna, during board meetings, we have raised the subject with them, and have continued to seek their help with us in obtaining this mutual objective.

The CHAIRMAN. Would you put on the record what is our official way of communicating with the Government of Cuba now? Through whom do we do it?

Mr. ROSTOW. Well, we have an interest section there.

The CHAIRMAN. Fine. So, it can be done directly?

Mr. ROSTOW. Yes.

The CHAIRMAN. Are other Latin American governments actively seeking Cuban ratification? Other Latin American countries?

Mr. ROSTOW. Well, we know that Jamaica and Mexico have responded to our suggestions, and we certainly will reopen the question much more actively now, once our ratification is complete. Again, Mr. Marshall, would you like to add to that?

Mr. MARSHALL. I would just confirm what you have said. We do what we can to work with these governments. The Mexicans in particular have an interest in seeing Cuba brought into this regime. The Mexicans certainly will be very happy with the ratification of Protocol I.

The CHAIRMAN. Finally, would you summarize again what effect you think U.S ratification of Protocol I would have upon the potential for Cuban ratification? Would it put more pressure on them?

Mr. ROSTOW. That certainly would be possible, Mr. Chairman. As I said, it would remove the propaganda argument that Cuba has been using on the subject, but I cannot and will not promise you that it will be magical. After all, the Cuban position in relation to the Soviet Union and the possibility of its use by Soviet naval vessels and so on is a real fact, and that is not going to change until the fundamental political relationships change.

The CHAIRMAN. It is noted that Colombia, Barbados, and Trinidad/Tobago must sign safeguard agreements with the Inter-National Atomic Energy Agency in order for the treaty to come into full force. What are the prospects for conclusions of agreements with the IAEA in the case of those countries?

Mr. ROSTOW. Well, there has been an exchange of draft texts between Colombia and Barbados and the IAEA, but no action has been taken in the case of Trinidad/Tobago, where there are no nuclear facilities. The prospects, for those countries where the treaty is in force and where there are nuclear facilities are good.

The CHAIRMAN. Both Brazil and Argentina have active peaceful nuclear power programs. Brazil is not yet bound by the treaty since it has not yet waived the requirement that all the conditions be met. Argentina has signed, but not ratified. Does the executive branch believe that Argentina and Brazil are prepared to forsake any nuclear weapons option?

Mr. ROSTOW. I think we shall make every effort once our ratification is complete, as I said a few moments ago, Mr. Chairman, to engage in a friendly, but very active diplomatic effort to clarify these points, and to bring about the full realization of the promise of the Tlatelolco regime within the entire zone.

With that, we will consult actively with our other friends in Latin America, and will try to bring the influence of this treaty and its promise to bear on the national decisions of the two countries you have mentioned.

The CHAIRMAN. Would you provide under proper classification to the committee any information regarding any potential nuclear weapons activities by any Latin American states?

Mr. ROSTOW. Yes, we will be very glad to do that.

[The information referred to is classified and is retained in committee files.]

The CHAIRMAN. Is the Soviet nation the only nation involved in either the Protocols or the treaty itself which has raised questions as to permission for transit of nuclear weapons?

Mr. ROSTOW. Yes, sir.

The CHAIRMAN. Do you have any reason to believe that any nation other than the Soviet Union would have any questions as to U.S. rights of free transit?

Mr. ROSTOW. Well, Mr. Robinson can answer more fully, but the pattern of practice, the provisions of the Panama Canal Treaty, and the uniform experience we have had would indicate that our views about freedom of transit are fully respected and are the basic rule of custom now.

Mr. ROBINSON. Yes, I might add to that, Mr. Chairman, that the negotiating history behind the treaty and the Protocols makes it rather clear that the transit and transport rights are protected. Indeed, as I recall, in the negotiating history this very issue of limiting transit and transport rights was raised and was rejected, and the Preparatory Commission for the treaty issued an explicit interpretation and understanding as to the effect of the treaty and the Protocols upon transit and transport rights.

Since our signature and ratification of Protocol II, the practice has been clear and unencumbered other than with regard to the Soviet statement, which, as I believe you understand, we do not regard as anything other than a political statement. The Soviet statement in fact noted the very negotiating history on which we have in part relied, and indeed the statement that was made upon their signature of Protocol I did not accompany their ratification.

Mr. ROSTOW. I might add that the statement itself, which has been so much discussed, is clearly a piece of political mischief, and does not purport even to be a legal argument. It carefully avoids in its language a legal argument, because after all, the Soviet Union is a great maritime power, and has exactly the same interest as the United States in preserving freedom of the seas.

Mr. ROBINSON. I might add that I meant to refer to Protocol II. The Soviets have not signed and are not eligible to sign Protocol I.

The CHAIRMAN. Would you clarify the extent to which we have discussed this issue directly with Soviet officials, and what their response has been?

Mr. ROSTOW. We submitted a statement to the depository, the Mexican Government, on this subject, but I do not myself know of any discussions we have had directly with the Soviets. Do you know?

Mr. ROBINSON. I am not aware of any.

The CHAIRMAN. We have had no discussions with Ambassador Dobrynin?

Mr. ROSTOW. I have not come across any.

Mr. ROBINSON. Apparently, Mr. Chairman, there were discussions. We made our position perfectly apparent, but there was no response of any significance, as I understand it.

The CHAIRMAN. Did you avoid saying "perfectly clear." [General laughter.]

Between whom did those discussions take place?

Mr. ROBINSON. Excuse me just for a moment.

[Pause.]

Mr. ROBINSON. Mr. Chairman, there was an exchange between our Government and their government in Moscow pursuant to instructions from Washington by cable at the time that the Soviet

Union signed Protocol II with the statement to which Mr. Rostow and I have made reference.

The CHAIRMAN. And the cables were signed by the Secretary of State then?

Mr. ROSTOW. Yes; they are always signed by the Secretary.

The CHAIRMAN. Yes, I know; having been at the receiving end of those at the United Nations.

Mr. ROBINSON. I gather that in addition there were also discussions in Moscow at the time, but with no result.

The CHAIRMAN. Do you suppose this would be an appropriate point to raise in the forthcoming discussions between the Secretary of State and Mr. Gromyko on Monday?

Mr. ROBINSON. Well, sir, I might say that in my opinion the Soviet statement has no effect. It was not attendant to their ratification of Protocol II. So, to me at this point it is a dead letter. For whatever reason, they did not pursue the statement.

Mr. ROSTOW. I would add that it is not really a current issue. They made the statement. They got some mileage out of it. It did not have any effect on any of the Latin American countries, and it is not a current issue.

The CHAIRMAN. It is not a current issue, but an example of the kind of statements which detract from a bilateral relationship that some might like to see achieved. Certainly, as you have said, it is a mischievous sort of thing which does not contribute. Certainly it does not impact well on members of this committee, much less the administration. Why they do it, what their motivation is—well, I suppose as George Eliot says, "Leave us not inquire into the motivations of a man," but all I can say is, if they are really serious about doing things, and if it does take the good will and the majority of this committee and the majority of the Senate to accomplish things like this in the future, statements of this type simply do not contribute to improved relationships in areas where we can have and do have a commonality of interests and objectives. We will never agree in certain areas, but certainly in this area of all areas we ought to agree on it. And certainly they have been in the forefront of saying, let's get together and talk. Well, here is an example of where we ought to be clearly responsible in dealing on every aspect of this issue. I would hope we would just use this as an example.

What about the situation if we desire to have a naval vessel with nuclear weapons aboard make a port call in Latin America, and the Soviet Union raised objections with the prospect of host governments citing the Treaty of Tlatelolco as justification? Specifically, do you anticipate that the uniform response of Latin American states would be to recognize the United States' position and to allow the port visit?

Mr. ROSTOW. Yes. I certainly should anticipate that. Of course, each host government could make up its own mind, but it would not make up its mind on the basis of a statement of a Soviet claim that such visits would be contrary not to the text at all of the Treaty of Tlatelolco, but to its spirit. They did not quite dare say that the treaty prohibited such visits.

You will recall that the Panama Canal Treaty and the pattern of practice to which Mr. Robinson and I referred makes it clear that

the Soviet statement has had no effect on the decisions of the Latin American governments or the official interpretation of the treaty, and thus far I would anticipate that the response of Latin American governments would correspond to the pattern of practice and the legal views which have prevailed until now.

Would you like to add to that?

Mr. ROBINSON. I certainly subscribe to that statement and I might add that my understanding is that we have continued to pursue our policy of neither confirming nor denying the presence of nuclear weapons and that in no instance have transit or transport privileges been denied on the basis of the treaty or its Protocols.

The CHAIRMAN. Is the position of the Department of Defense that there is no requirement to store or deploy nuclear weapons in the Virgin Islands, Puerto Rico, or Guantanamo?

Admiral Austin, do you want to respond to that?

Admiral AUSTIN. It is our position right now that we have no requirement to store weapons that would be in violation of the Protocol.

The CHAIRMAN. I have a few additional questions which we will submit to you for the record. We will leave the record open for the rest of the day in the event that members of the staff may want to consult with their Senators, and particularly with the chairman of the Arms Control Subcommittee, Senator Pressler, and the ranking member of that subcommittee. If there are any further questions, we will submit them to you, and we will keep the record open for that.

I very much appreciate your appearance here today. I concur with the position the administration has taken. I can assure you of a speedy and, I believe, overwhelming approval in this particular area. We look upon this as the first concrete step we now have taken in the direction of sensible, verifiable, logical, and balanced arms control that is in our interest and the interest of every participating country, and certainly in the interest of the world.

I thank you very much indeed.

This hearing is adjourned.

[Additional questions and answers follow:]

DEFENSE DEPARTMENT'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD

Question 1. We reserve the right of our nuclear-capable ships and aircraft to transit the zone and to make port calls within the zone under Protocol I. What is the understanding of the Latin American states on this issue?

Answer. The understanding of the Latin American states on this issue is clearly indicated by the Final Act of the Preparatory Commission for the Tlatelolco Treaty, which stated that transit and transport by non-Latin American states:

". . . must be understood to be governed by the principles and rules of international law; according to these principles and rules it is for the territorial state, in the free exercise of its sovereignty, to grant or deny permission for such transit in each individual case. . . ."

The actions of Latin American states since the conclusion of the Treaty likewise show that they share our understanding on this point.

When Nicaragua ratified the Treaty, it formally declared its right to permit such transit through its territory and no other State took issue with that statement. The Mexican Government has provided us, in bilateral discussions on port visits and overflights, with an assurance that it agreed with the Preparatory Commission's interpretation.

No Latin American party to the Treaty objected when the United States and France made formal statements confirming transit and transport rights when ratifying Protocol II; and no Latin American party has denied transit or transport privileges on the basis of the Treaty or its Protocols, notwithstanding the fact that U.S. military vessels and aircraft frequently engage in transits, port calls and overflights in the region, and that it is U.S. policy neither to confirm nor deny the presence of nuclear weapons in such cases.

Furthermore, the 1977 Panama Canal Neutrality Treaty explicitly permits Panama to permit U.S. military vessels to transit the Canal regardless of their armament or cargo, and a number of Latin American states have adhered to the Protocol accompanying that Treaty without objection to this provision.

Question 2. Have we sought written clarification from any Latin American states of their interpretation of our transit and port call rights?

Answer. No. We have never felt any need to seek any such clarification. We believe the record speaks clearly for itself.

Question 3. Have we ever received a protest from a Latin American state on this issue?

Answer. We are not aware of any such protest.

Question 4. Have any of our nuclear-capable ships or aircraft made calls on a Latin American nation? If so, did the issue of whether the ship or aircraft carried nuclear weapons arise?

Answer. It is our policy neither to confirm nor deny the presence of nuclear weapons in such cases. Nonetheless, no Latin American state has denied transit or transport privileges to a nuclear-capable U.S. ship or aircraft on the basis of the Treaty or its Protocols, nor, to our knowledge, has this issue even arisen in such a case.

Question 5. What is your definition of "transit"? How long could a ship make a port call without being "deployed" with nuclear weapons? Would we have the right to off-load nuclear weapons in our territories within the zone in case of emergency?

Answer. The language used in this respect in the negotiating history of the Treaty, and in the relevant U.S. statements, is "transit and transport." These terms are not further defined in these documents; and it would not be in our interests to put forward a specific period of time to which transit and transport would be limited. The terms should be interpreted on a case-by-case basis, bearing in mind the basic idea that the Treaty was not intended to inhibit activities reasonably related to the passage of nuclear weapons through the zone. Certainly the off-loading of nuclear weapons in case of an emergency would not be prohibited.

Question 6. Considering the fact that it is the policy of the Defense Department neither to confirm nor deny the presence of nuclear weapons aboard ships or aircraft, how would we deal with a protest under the Soviet interpretation of Protocol II?

Answer. The Soviet statement at the time of their signature of Protocol II was apparently a political statement rather than a different legal interpretation; and indeed, the Soviet statement expressly acknowledged that the negotiating history of the Treaty supported our interpretation on this point. In any event, we would reject as a matter of principle any protest based on the theory that the Treaty or Protocols prohibit or restrict our transit or transport in the zone. In doing so, we would neither confirm nor deny the presence of nuclear weapons, nor would it be necessary for us to do so.

ACDA's Responses to Additional Questions Submitted for the Record

Question 1. Have we any indication that the Soviet Union is adhering to its position that permission for transit of nuclear weapons in any form would contradict the goals of the treaty? Specifically, is the Soviet Union keeping its nuclear vessels out of the zone of application and avoiding port calls anywhere in the zone of application by any vessel which might have nuclear weapons?

Answer. We have no indication that the Soviet Union has refrained from transits or port calls in the region because of its political statement of opposition to transits involving nuclear weapons. The Soviet Union did not take the necessary steps, at time of its ratification of Protocol II to the Treaty of Tlatelolco, to give this statement of opposition legal effect.

Question 2. Are we correct in assuming American surface ships or submarines with nuclear weapons aboard could transit the Panama Canal under the terms of the treaty and protocols? Will the same right of transit pertain when the Panama Canal Treaties come into effect?

Answer. The Panama Canal Treaties have already entered into force. They specifically guarantee the right of U.S. military vessels to transit the Canal, regardless

of their cargo or armament. This includes submarines as well as surface ships. The Treaty of Tlatelolco and its Protocols in no way restrict this right of transit.

Question 3. Will the United States retain the right under the protocol to visit ports in Puerto Rico, the Virgin Islands, and the Guantanamo Naval Base with vessels carrying nuclear weapons?

Answer. Yes. The United States will retain the right to permit its naval vessels to visit these ports, whether or not they carry nuclear weapons.

Question 4. Would the United States have the right to repair and service ships carrying nuclear weapons in ports in the Virgin Islands, Puerto Rico, or Guantanamo?

Answer. Yes, incident to transit through the area.

Question 5. Would the United States have the right to off-load nuclear weapons from vessels in port in the Virgin Islands, Puerto Rico, or Guantanamo in the event of operational requirements?

Answer. Yes, if such off-loading is temporary and is required in the course of a transit through the area.

Question 6. The Administration has asked the Senate to ratify Protocol I with our declarations and understandings attached. Have we formally asked any of the 24 Latin American nations whether they would have any problems with our ratification in this form?

Answer. No. We have had no reason to believe that our ratification subject to such declarations and understandings would cause any problems with other Latin American nations. Our ratification of Protocol II subject to such declarations and understandings caused no problems of this kind.

[Whereupon, at 10:41 a.m., the committee adjourned, subject to call of the Chair.]